

CHAPTER 27

NATURAL RESOURCES DAMAGE

27-1 SCOPE

27-1.1 General.

a. This chapter establishes Chief of Naval Operations (CNO) requirements, guidelines and standards for the assessment of damages arising from the release of oil or hazardous substances (OHS) that injures or threatens to injure the natural resources of the United States. This chapter also describes the responsibilities and conduct of the Navy Regional Environmental Coordinator (Navy REC) when acting as the Federal Trustee for Natural Resources (the Trustee) on behalf of the Secretary of Defense (SECDEF).

b. SECDEF has not permanently delegated Trustee authority under the Oil Pollution Act of 1990 (OPA 90) to the Services; nor has the Assistant Secretary of the Navy for Installations and Environment permanently delegated Trustee authority to CNO under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Accordingly, Navy RECs should ask CNO (N45) for assistance in securing authority to proceed as a Natural Resource Trustee when required.

27-1.2 Application. This chapter applies to OHS releases from *any source*, that injure or threaten to injure natural resources of the United States *within Navy management or control*. In addition, this chapter also applies to OHS releases originating from *Navy sources (including public vessels)*, that injure or threaten to injure the natural resources of the United States *wherever found*.

27-1.3 References.

a. 15 CFR 990, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, Natural Resource Damage Assessment Procedures.

b. 43 CFR 11, Department of Interior (DOI), Natural Resource Damage Assessment Procedures.

c. 40 CFR 300.600, National Oil and Hazardous Substances Pollution Contingency Plan (NCP).

d. Department of Defense (DOD) Instruction 4715.3, Environmental Conservation Program of 3 May 1996 (NOTAL).

e. Executive Order 12777, Oil Pollution Act Implementation.

f. Executive Order 12580, Superfund Implementation (as amended by Executive Order 13016).

g. DOD Instruction 4715.7, Environmental Restoration Program of 22 April 1996 (NOTAL).

h. 40 CFR 6, United States Environmental Protection Agency (EPA), National Environmental Policy Act Procedures.

i. United States Coast Guard (USCG), National Pollution Funds Center (NPFC) User Reference Guide, June 1996 (NOTAL).

27-2 LEGISLATION

The following Federal statutes assign Trustee responsibilities for the protection of natural

resources and the assessment of damages caused by OHS releases:

27-2.1 Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). CERCLA, 42 U.S.C. 9601, et seq., authorizes Natural Resource Trustees to recover damages for injury to, destruction of or loss of natural resources resulting from the release of a hazardous substance. Federal and State officials are designated to serve as Natural Resource Trustees under CERCLA. CERCLA also recognizes the authority of Indian Tribes to act as Natural Resource Trustees.

27-2.2 Federal Water Pollution Control Act of 1972 (FWPCA) as amended by the Clean Water Act of 1977 (CWA). The FWPCA, 33 U.S.C. 1251, et seq., authorizes the President, in the case of an OHS release, to take any action necessary to mitigate damage to the public health and welfare; including, but not limited to fish, shellfish, wildlife, public and private property, shorelines and beaches. Natural Resource Trustees are authorized to recover damages for injury to, destruction of or loss of natural resources resulting from a discharge or the substantial threat of discharge, of oil into navigable waters. Federal and State officials may be designated to serve as Natural Resource Trustees.

27-2.3 National Environmental Policy Act (NEPA). NEPA, 42 U.S.C. 4321 et seq., requires Federal agencies to disclose the environmental impact of each major Federal action that may significantly affect the quality of the human environment. Reference (a) suggests procedures for compliance with NEPA, 15 CFR 990.23, but only where consistent with regulations adopted by each Federal Trustee. Guidance on NEPA regulations is provided at chapter 2.

27-2.4 Oil Pollution Act of 1990 (OPA 90). OPA 90, 33 U.S.C. 2701, et seq., provides for the prevention of, liability for, removal of and

compensation for the discharge or substantial threat of discharge, of oil into or upon the navigable waters, adjoining shorelines or the Exclusive Economic Zone of the United States.

The Act provides for the designation of Federal, State, Indian Tribe and Foreign Natural Resource Trustees. The Trustees determine whether injury to, destruction of or loss of use of natural resources has resulted from such a discharge. The Act authorizes Trustees to present claims for damages (including the reasonable cost of assessing damages), to collect such damages and to restore, rehabilitate or replace natural resources under their Trusteeship.

27-3 TERMS AND DEFINITIONS

In some cases, references (a) and (b) define identical terms differently. In those cases, the definitions provided below combine elements of each reference to best accommodate Navy policy. In any case, the following definitions are provided only for the purpose of issuing Navy policy.

27-3.1 Baseline. The condition of the natural resources and services that would have existed had the OHS release not occurred. Baseline data may be estimated using historical data, reference data, control data or data on incremental changes, alone or in combination, as appropriate.

Types of information that may be useful in evaluating baseline include: information collected regularly for a period of time prior to the incident; information identifying historical patterns or trends; information collected from areas unaffected by an incident that are similar to the affected area; and information from the area of the incident after particular natural resources or services have recovered. This information may be obtained from Integrated Natural Resource Management Plans, Base Master Plans, Natural Resource Management Plans, NEPA Documents, special studies and other such documents.

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27-3.2 Cost-effective. The least costly activity among two or more activities that, in the judgment of the Trustee, provides the same or comparable level of benefit.

27-3.3 Damages. Each party responsible for the release or threatened release of OHS affecting the natural resources of the United States is liable for monetary compensation for injury to, destruction of, loss of or loss of use of natural resources, including the reasonable assessment costs. (See 27-3.23.)

27-3.4 Discharge (Spill). Any emission (other than natural seepage), intentional or unintentional, including, but not limited to, leaking, pumping, pouring, emitting, emptying or dumping.

27-3.5 Exclusive Economic Zone. A zone extending 200 NM from the territorial sea baseline, unless a maritime boundary with another country is closer than 200 NM.

27-3.6 Exposure. Direct or indirect contact with the released OHS, including indirect injury as a result of disruption within an organism's food web. Exposure does not apply to response-related injuries and injuries resulting from a substantial threat of an OHS release.

27-3.7 Facility. Any structure, group of structures, equipment or device (other than a vessel) that is used for one or more of the following purposes: exploring for, drilling for, producing, storing, handling, transferring, processing, or transporting OHS. This term includes any motor vehicle, rolling stock, or pipeline used for one or more of these purposes.

27-3.8 Facility Response Team (FRT). Emergency response personnel (formerly known as On-Scene Operations Teams) who are designated, trained and equipped to provide rapid response to OHS releases that occur on or from their facility.

27-3.9 Federal On-Scene Coordinator (Federal OSC). The United States government official pre-designated by the EPA or the USCG to coordinate and direct the Federal Response under the NCP. In the case of HS releases from Navy facilities or vessels, the Navy OSC is the Federal OSC.

27-3.10 Federal Trustees for Natural Resources. OPA 90 and CERCLA designate the President as the Trustee for Federally protected or managed natural resources on behalf of the public. Executive Orders, in turn, designate the heads of specified departments, including SECDEF, as Natural Resource Trustees.

27-3.11 Hazardous Substance (HS).

a. Any substance so designated by the CWA;

b. Any element, compound, mixture, solution or substance so designated by CERCLA;

c. Any solid waste having the characteristics of or listed as, a Hazardous Waste (HW) as defined under Resource Conservation and Recovery Act (RCRA) (but not including any waste that has been exempted by Act of Congress);

d. Any toxic pollutant listed under the Clean Air Act;

e. Any imminently hazardous chemical substance or mixture for which the administrator of the EPA has taken action under the Toxic Substances Control Act.

f. The term does not include crude oil or any refined petroleum product (such as gasoline

g. or fuel oil) that is not otherwise specifically listed or designated as a HS;

h. The term does not include natural gas,

natural gas liquids, liquefied natural gas or synthetic gas useable for fuel (or mixtures of natural gas and synthetic gas), unless otherwise defined by State regulations.

27-3.12 Incident. Any occurrence or series of occurrences having the same origin, involving one or more vessels, facilities or any combination thereof, resulting in the release or substantial threat of release of OHS.

27-3.13 Injury. An observable or measurable adverse change in a natural resource or the impairment of its services. Injury includes the destruction, loss or loss of use of a natural resource or service resulting from an OHS release or the threat of such release. Injury may be found to have occurred directly or indirectly so long as a pathway from the release to the injury can be established. Reference (b) contains resource-specific conditions for injury.

27-3.14 Lead Administrative Trustee (LAT). The Trustee selected by mutual agreement among Trustees having jurisdiction over the natural resources affected by an OHS release to coordinate joint assessments, to avoid duplicate damage claims and to serve as the Trustees' primary point of contact with response agencies, the Responsible Party and the public. The LAT provides general administrative support to the restoration process, unless the Trustees decide otherwise.

27-3.15 NCP. The National Oil and Hazardous Substances Pollution Contingency Plan, reference (c), addresses the identification, investigation and study of, as well as response to OHS release incidents.

27-3.16 Natural Resource Damage Assessment. The process of collecting and evaluating information to determine the nature and extent of injury to natural resources resulting from an incident; determining whether and which restoration measures may be necessary to bring

the injured resources and services back to baseline; and seeking to make the public whole for interim lost use of those resources and services.

27-3.17 Natural Resources. Includes land, fish, wildlife, biota, air, surface water, ground water, drinking water, and other such resources belonging to, managed by, held in trust by or otherwise controlled by the United States (including the resources of the **Exclusive Economic Zone**).

27-3.18 Navigable Waters. The waters of the United States, including the territorial seas and:

a. All waters that are currently used, were used in the past or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

b. Interstate waters, including interstate wetlands;

c. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sand flats, and wetlands, the use, degradation or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) That are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) that are used or could be used for industrial purposes by industries in interstate commerce;

d. Any impoundment of waters otherwise defined as navigable waters above;

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e. Tributaries of waters identified in paragraphs (a) through (d) above; and

f. Wetlands adjacent to waters identified in paragraphs (a) through (e) above, provided that waste treatment systems (other than cooling ponds that otherwise meet the criteria of this subsection) are not waters of the United States. (See also the definition of wetlands in the COE 1987 Wetlands Delineation Manual).

27-3.19 Navy On-Scene Coordinator (NOSC).

The Navy official pre-designated to coordinate Navy OHS pollution contingency planning and direct Navy OHS pollution response efforts in a pre-assigned area. U.S. shoreside NOSCs are normally RECs pre-designated by the area environmental coordinators. (For a complete discussion of these designations, please see chapter 10).

27-3.20 Oil. Animal, vegetable or petroleum-based oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredged spoil. In practice, this includes refined products such as gasoline, diesel, jet fuel and cooking oil.

27-3.21 OPA 90. The Oil Pollution Act of 1990, 33 U.S.C. 2701, et. seq., See subsections 27-2.4 and 27-4.1(a) of this chapter.

27-3.22 Preliminary Impact & Exposure Report (PIER). A rapid "first order" report made on-site by the FRT to determine whether and the extent to which natural resources have been exposed to an OHS release. (See appendix M for an exemplar.)

27-3.23 Reasonable Assessment Costs. Generally, the costs of assessments conducted under references (a) and (b). Trustees may recover their reasonable assessment costs, even absent restoration, provided that assessment actions undertaken were premised on the reasonable likelihood of injury and need for

restoration. Reasonable assessment costs also include administrative and some legal costs necessary to restoration planning, implementation and monitoring as well as the costs associated with public participation in these processes.

27-3.24 Rebuttable Presumption. An evidentiary rule of law that presumes without further proof that damages assessed by the Trustees using the procedures specified in either references (a) or (b) are reasonable—shifting the burden of proof to the Responsible Party to demonstrate that the damages so assessed are not reasonable.

27-3.25 Recovery. The return of injured natural resources and services to baseline.

27-3.26 Release. Any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of OHS into the environment; the abandonment or discarding of barrels, containers, or other closed receptacles containing OHS. The term "release" does *not* include:

- a. Activities that result in exposure to persons solely within a work space;
- b. Emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel or pipeline pumping station engine;
- c. The release of nuclear material; or
- d. The normal application of fertilizer and herbicides.

27-3.27 Response. The containment and/or removal of OHS released into the natural environment; The taking of other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, injuries to fish, shellfish, wildlife, public or private property.

27-3.28 Responsible Party (RP). Any person (legal or natural) who, in the view of the Trustees, may ultimately be found liable for damages resulting from the actual or threatened release of OHS affecting natural resources under their Trusteeship, including the following:

- a. **Vessels**, including the owner, operator or bare boat charter of such vessel;
- b. **Onshore Facilities**, including the owner or operator of such facilities; and
- c. **Offshore Facilities**, including the owner or operator of such facility, the lessee or permit holder of the area in which the facility is located or the holder of a right of use and easement within such area;
- d. **Pipelines**, including the owner or operator of it.

Any person who owns or operates an HS disposal facility; arranges for the disposal, treatment or transportation of HS; or accepts HS for transport to a disposal or treatment facility may also be deemed an RP under CERCLA.

27-3.29 Restoration. Any action (or alternative) or combination of actions (or alternatives) intended to restore, rehabilitate, replace or acquire the equivalent of injured natural resources and services.

27-3.30 Services or Natural Resource Services/Functions. The physical or biological functions performed by a natural resource that benefit another natural resource or the public. For example, the delivery of oxygen and nutrients to aquatic life would be a "natural resource service" provided by a healthy river. Similarly, recreational fishing at the river would be a "natural resource service" to the public.

27-3.31 Trustees (Natural Resource Trustees). Resource agencies designated by the President,

State Governors and American Indian Tribes who prosecute claims for damages and act on behalf of the public to protect and restore natural resources within their jurisdiction. (Section 27-4 of this chapter provides an overview of the legal authority for those appointments, while section 27-7 outlines Trustee responsibilities under controlling statute and regulation.)

27-3.32 Value. The maximum amount of goods, services or money an individual is willing to forgo to obtain other goods or services. The minimum amount of goods, services or money an individual is willing to accept to forgo other goods or services. A measure of the public's willingness to pay for a service.

27-4 REQUIREMENTS

Reference (d) states "All DOD Components shall develop and promulgate criteria and procedures for assessing natural resource damage claims in the event natural resources under DOD control are damaged [injured] by oil or a hazardous substance released by another party." The requirements of this chapter, however, go beyond reference (d) and apply to natural resource injury occasioned by OHS releases from both DOD and non-DOD sources. This instruction maintains a distinction between physical *injury* to natural resources and the monetary *damages* arising at law from such injury.

27-4.1 In the Case of Oil Spills.

- a. The Oil Pollution Act (OPA 90), 33 U.S.C. 2701, et seq., provides for the designation of Federal, State, Indian Tribe and Foreign Natural Resource Trustees empowered to determine if injury to natural resources and services under their Trusteeship has resulted from a discharge, or substantial threat of discharge, of oil into or upon the navigable waters or adjoining shorelines of the United States. Trustees are responsible for the assessment of natural resource damages resulting from those injuries; the

presentation of claims for damages; the recovery of damages; and the development and implementation of a plan for the restoration, rehabilitation, replacement or acquisition of equivalent natural resources or services.

b. OPA 90 also provides that the President, acting through the Department of Commerce, NOAA, shall issue regulations for the assessment of natural resource damages resulting from a discharge of oil. Assessments performed by Federal, State or Tribal Trustees under these regulations, are accorded a rebuttable presumption of reasonableness.

c. Accordingly, NOAA has issued a Final Rule, reference (a), for the use of authorized Trustees in executing such assessments.

d. Executive Order 12777, reference (e), in turn, designates SECDEF as an authorized Federal Trustee for Natural Resources and directs Trustees to exercise the duties defined in the NCP, reference (c). This Order also designates the Secretaries of Interior, Agriculture, Commerce and Energy as Federal Trustees for Natural Resources.

e. At the time of this writing, SECDEF has not delegated standing Trustee authority under OPA 90 to the component services.

27-4.2 In the Case of Hazardous Substance Releases

a. The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9607 et seq., provides for the designation of Federal and State Natural Resource Trustees who assess damages for injury to, destruction of, loss of or loss of use of, natural resources under their Trusteeship as a result of the release of a hazardous substance. CERCLA also recognizes the authority of Indian Tribes to commence actions as Natural Resource Trustees. Damages recovered by the Federal and State

Trustees are available for use only to restore, replace or acquire the equivalent of the natural resources impacted by the release.

b. CERCLA requires the issuance of two types of regulations for the assessment of these natural resource damages. Assessments performed by Federal and State Trustees under either regulation are accorded a rebuttable presumption of reasonableness. The President delegated the promulgation of these regulations to The Department of the Interior (DOI) under Executive Order 12580, reference (f).

c. Accordingly, DOI has issued reference (b), establishing two types of natural resource damage assessment regulations: Types A and B. The Type A rule sets forth standard procedures for simplified assessments requiring minimal field observation and relies upon a computer model to measure injury to the natural resources using historical data or reference data from appropriate literature. The Type A rule is only applicable to minor spills in coastal and marine environments or the Great Lakes. The Type B rule establishes alternative protocols for calculating natural resource damages based upon the cost of restoring, rehabilitating, replacing or acquiring equivalent resources and is used when the Type A rule is not applicable. The Type B rule also allows for the assessment of all uses lost to the public pending restoration or rehabilitation of the injured resource.

d. Reference (f) also designates the Secretaries of Defense, Interior, Agriculture, Commerce and Energy as Federal Trustees for Natural Resources under CERCLA. Paragraph 6(a) of reference (g), in turn, delegates that authority to the Secretaries of the Military Departments.

e. At the time of this writing, the Assistant Secretary of the Navy for Installations and Environment has not delegated standing Trustee authority under CERCLA to CNO.

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27-4.3 Disposition of Funds Recovered. Reference (d) directs that "funds recovered by the Department of Defense as a result of natural resource damage claims shall be used for restoration, replacement or acquisition of equivalent natural resources ... on the installation where the [injury] occurred."

27-5 NAVY POLICY

The Navy is committed to the restoration, rehabilitation or replacement of natural resources and services within its management or control injured by OHS releases to the environment. Where releases from Navy vessels and/or facilities may be responsible for injury to natural resources not within Navy control, the Navy will participate in natural resource damage assessment and restoration processes instituted by lawfully directed Natural Resource Trustees. The policy of the United States Navy, when acting on behalf of SECDEF as Federal Trustee for Natural Resources, is to seek compensation and/or financial participation from parties responsible for injuries to natural resources within Navy management or control.

27-5.1 Oil. Where an oil spill, regardless of source or physical location, injures or threatens to injure natural resources within Navy management or control, reference (a) shall serve as guidance to Navy activities in the mitigation, assessment and collection of natural resource damages occasioned by such spill. Where oil spills from Navy vessels and/or facilities result in injury to natural resources not within Navy control, the Navy will encourage Trustees conducting NRD assessments to use the procedures in reference (a).

27-5.2 Hazardous Substances. Where the release of hazardous substances, regardless of source, injures or threatens to injure natural resources within Navy management or control, reference (b) shall serve as guidance to Navy activities in the assessment and collection of natural resource damages occasioned by such release. Where HS releases from Navy vessels

and/or facilities may be responsible for injury to natural resources not within Navy control, the Navy will encourage Trustees conducting NRD assessments to use the procedures in reference (b).

27-6 RESPONSIBILITIES

27-6.1 CNO (N45) shall

a. Develop, issue, review and provide execution oversight of Navy policy on Natural Resource Trusteeship;

b. Develop, issue, review and provide execution oversight of Navy policy on natural resource damage assessment and restoration procedures; and

c. Provide assistance to the Navy REC in securing authority to proceed as a Natural Resource Trustee when appropriate.

27-6.2 The Navy Regional Environmental Coordinator (Navy REC) shall

a. Act on behalf of SECDEF as Federal Trustee for natural resources within Navy management or control when so authorized by CNO. (The Navy REC's specific responsibilities when acting as Federal Trustee are enumerated in section 27-7)

b. Establish procedures consistent with the provisions of this chapter and references (a) and (b) to assess damages resulting from OHS releases into or upon natural resources within the Navy REC's management or control.

c. Provide executive oversight to the efforts of the following Navy personnel under this chapter:

(1) Regional counsel,

(2) Regional comptrollers

(3) Facility Commanders

(4) Engineering Field Division (EFD) and Engineering Field Activity (EFA) representatives.

d. Ensure that activities within the REC's Area of Responsibility (AOR) incorporate a PIER report into the standard operating procedure of the local FRT.

e. Annually exercise local EFD/EFA representatives, local counsel, comptrollers and FRTs in the execution of Natural Resource Trustee responsibilities.

(1) Annual exercises may take the form of comprehensive tabletop drills or RECs may conduct them in combination with area spill response exercises, including Preparedness for Response Exercise Program (PREP) events.

(2) Contracted support personnel relied upon in local contingency plans should also be invited to participate in these exercises.

27-6.2.1 The Navy REC Counsel shall

a. Coordinate the Navy REC's communications and negotiations with the RP and/or non-Navy Trustees having jurisdiction over natural resources affected or threatened by the release.

b. Negotiate with the RP and/or Trustees a Memorandum of Understanding (MOU) regarding the funding of and procedures to be used in natural resource damage assessment and restoration planning. (See also paragraph 27-7.2.5.)

c. Attend relevant Trustee meetings and report the status of Trustee negotiations in writing to the Admiralty Claims Division of the Navy

Judge Advocate General and CNO (N45) biannually.

d. Periodically advise the Environment and Natural Resources Division of the Department of Justice (DOJ) on the status of natural resource damage claim negotiations and refer such claims to DOJ when negotiations with the RP have reached an impasse or have otherwise failed to implement the Trustees' restoration plan within a reasonable period of time.

e. Assist the Navy REC in the planning and execution of natural resource damage assessment and restoration activities within the REC's AOR.

f. Annually exercise the responsibilities identified above.

27-6.2.2 The Regional Comptroller shall

a. Document all Navy costs related to natural resource damage assessment and restoration activities, including but not limited to pre-assessment, restoration planning, plan execution and monitoring costs. (See 43 CFR 11.15 and 15 CFR 990.30)

b. Report these costs in writing to CNO (N45) each year that natural resource damage assessment or restoration activities are pending in the REC's AOR.

c. Assist the Navy REC in the planning and execution of natural resource damage assessment and restoration activities within the REC's AOR.

d. Annually exercise the responsibilities identified above.

27-6.3 COMNAVFACENGCOM shall

a. Act as natural resource technical consultant to the Navy, providing technical

support in the planning and execution of natural resource damage assessment and restoration activities.

b. Coordinate with the EFDs/EFAs to develop expertise in natural resource damage mitigation, assessment and restoration.

27-6.4 Regional EFDs/EFAs shall upon request

a. Act as the Navy REC's primary point of contact for the planning and execution of natural resource damage assessment and restoration activities within the REC's AOR.

b. Act as the Navy RECs primary repository of natural resource baseline information until the REC determines that local activities in his/her AOR have sufficient resources and training to assume this function. (See paragraph 27-7.1.3.)

c. Assist the REC in developing local area guidance on natural resource damage assessment and restoration procedures in consonance with the provisions of this chapter and references (a) and (b). Coordinate the development of this guidance with installation/facilities, where they have knowledge concerning on-site resources.

d. Act as the Navy RECs primary contracting authority in retaining technical assistance from the private sector to facilitate the planning and execution of natural resource damage assessment and restoration activities within the REC's AOR.

e. Assist the Navy REC in the planning and execution of natural resource damage assessment and restoration activities within the REC's AOR.

f. Annually exercise the responsibilities identified above.

27-6.5 Facility Response Teams shall

a. Report whether and the extent to which natural resources have been exposed to an OHS release.

b. Compile and sign a PIER report (an example of which is provided in appendix M) within 6 hours of being notified of an OHS release in their AOR.

c. Deliver the PIER report to the cognizant Navy REC not later than the close of business on the next business day following notification of an OHS release in their AOR.

d. Annually exercise the responsibilities identified above.

27-6.6 The RP. When a Navy vessel or facility is deemed the RP for an OHS release, the cognizant Navy command shall:

a. Fully cooperate with the Trustees in the natural resource damage assessment planning, restoration and monitoring process.

b. Enter into an MOU with the Trustees to fund the reasonable cost of pre-assessment activities and to meet the other objectives of subparagraph 27-7.2.5 (b).

c. Pay to the Trustees the reasonable cost of natural resource damage assessment planning, restoration and monitoring activities as may be negotiated between the RP and the Trustees.

27-7 TRUSTEESHIP

As described in section 27-4 of this chapter, the President appointed SECDEF to act as Federal Trustee for Natural Resources within DOD management or control.

27-7.1 Prior to the Incident. As a Trustee of these resources, the Secretary is responsible for conducting pre-incident planning to help ensure that the assessment results in technically sound

and cost effective restoration and to restore to baseline resources injured by OHS releases.

27-7.1.1 Pre-incident Planning. As described in section 27-6, CNO (N45) may call upon the Navy REC to act on behalf of SECDEF as Federal Trustee for natural resources within Navy management or control. Consequently, the Navy REC shall coordinate with OHS response organizations and other Trustees in its AOR to identify:

- a. Natural resource damage assessment teams;
- b. Trustee notification systems;
- c. Support services;
- d. Natural resources and services at risk;
- e. Area and regional response agencies and officials;
- f. Available baseline information;
- g. Data management systems;
- h. Assessment funding issues and options; and

i. State Trustee natural resource damage assessment methodologies with reduced procedural requirements for small-scale restoration plans.

27-7.1.2 Regional and Area Contingency Planning. The Navy REC shall represent the interests of the Navy in regional and area contingency planning activities, including but not limited to contingency plan development, drills and exercises. The Navy REC shall ensure that NOSC plans incorporate Navy natural resource expertise into the management of spill response -- both real time and on-scene -- to evaluate and to mitigate potential injury to natural resources. NOSC plans should be seamlessly integrated with

Regional and Area Contingency Plans and provide for coordination between DOD and non-DOD Natural Resource Trustees.

27-7.1.3 Baseline Assessment. The collection and maintenance of ecological information required by chapter 22 are essential to pre-incident planning on behalf of the Navy REC. Baseline data may include, but should not be limited to:

- a. USCG Shoreline Assessment Maps;
- b. NOAA Environmental Sensitivity Index Maps;
- c. Studies conducted by and/or reports issued by regional educational institutions and/or governmental agencies that describe natural resources within Navy management or control;
- d. Integrated Natural Resource Management Plans; and
- e. Navy studies and/or reports including those conducted for purposes other than natural resource management describing natural resources within Navy management or control (such as Environmental Assessments and Impact Statements).

27-7.2 During the Incident

27-7.2.1 Pre-assessment Phase. Upon notification of an OHS release incident, the Trustees must first determine whether certain threshold criteria have been met to authorize commencement of the damage assessment process and to establish which assessment procedure, if any, may be applicable.

- a. Each Navy activity FRT shall execute a PIER report (an example of which is provided in appendix M) within 6 hours of release notification.

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b. The PIER report records observable injury to natural resources and services by an OHS release.

c. The FRT shall, by close of business the next business day, deliver the PIER report to the Navy REC.

d. When, in the view of the Navy REC, the PIER report warrants a more detailed survey of natural resource injuries, the Navy REC shall activate local EFDs/EFAs, counsel and comptrollers to execute the responsibilities outlined in section 27-6 above.

e. The Navy REC staff shall, in turn, maintain a record of all command PIER reports for at least 3 years.

27-7.2.2 Mitigation of damages. Upon notification or discovery of an injury or threat of injury to natural resources within Navy management or control, the Navy REC shall take appropriate action to mitigate such injury both during and after spill response activities.

27-7.2.3 Coordination with the Federal OSC. Some damage assessment activities, such as data collection and analysis, will require coordination with the OSC in charge of the spill response. The OSC will also require advice from the Trustees regarding potentially affected resources, environmental sensitivities and environmentally prudent response alternatives. Trustees should communicate requirements and advice to the OSC via the LAT and/or the government liaison official in the OSC's Unified Command.

27-7.2.4 Coordination with other Trustees. Trustee responsibilities for natural resources may overlap between various agencies depending upon the resource threatened and the extent to which Trustee authority has been vested in a particular agency.

a. For example, the Secretary of Commerce acts as the Federal Trustee for natural resources found in, under or using the navigable waters of the United States, its Exclusive Economic Zone and outer continental shelf. These resources include marine fisheries, anadromous (migrating) fish, endangered species, marine mammals and the resources of National Marine Sanctuaries and National Estuarine Research Reserves.

b. The Secretary of Interior, on the other hand, acts as Federal Trustee for natural resources managed or controlled by DOI. These resources include migratory birds, anadromous fish, endangered species, marine mammals, Federally-owned minerals, certain Federally-owned lands and certain Federally managed water resources.

c. These agencies have broad authority over the resources within their management or control, as well as over resources within the management or control of other Federal agencies.

d. Similarly, the States and Indian Tribes may exercise Trustee roles. For example, SECDEF may share Trustee responsibilities with the Governor of the State of Alaska and the Secretary of the Interior for the same migratory birds located on property managed by the U.S. Navy in Alaska.

e. Consequently, the coordination of damage assessment, mitigation and restoration activities with non-DOD Trustees is an important part of the Navy REC's responsibilities and should be among his/her primary and immediate concerns when notified of potential injury to natural resources.

27-7.2.5 Coordination with the RP. The Trustees are required to invite the party or parties responsible for natural resource damages to participate in the damage assessment and restoration planning process. Reference (a) requires delivery of such invitations in writing to

the RP not later than the Notice of Intent to Conduct Restoration Planning. Reference (b) requires delivery of written invitations to the RP before preparation of an Assessment Plan.

a. To mitigate the adversarial nature of the damage assessment process, however, the Navy REC shall endeavor to include the RP in Trustee activity at the earliest possible opportunity to promote a climate of cooperation and mutual trust.

b. To facilitate cost-effective cooperation, the Navy REC shall negotiate with the RP and endeavor to enter into a MOU that provides, among other things, for:

- (1) the funding of Navy assessment and restoration activities;
- (2) the consolidation of technical expertise;
- (3) the review of relevant data;
- (4) assessment, planning, implementation and monitoring milestones; and
- (5) dispute resolution procedures.

27-7.3 After the Incident. The Trustees are responsible for the assessment of damages to natural resources, the presentation of claims for damages to the RP, the recovery of damages and the development and implementation of a plan for restoration of the injured natural resources or services.

27-7.3.1 Formal Assessment. The Trustee must quantify the degree and extent of injuries to natural resources. The Trustees must determine the source of exposure, pathway and adverse change to natural resources or services because of an OHS release incident. The Trustees must also assess injuries to a natural resource caused by spill response and clean-up activities.

27-7.3.2 Restoration Planning. The Trustees must also develop and implement a plan for restoration. Reference (a) requires that restoration planning by Federal Trustees be subject to NEPA. "NEPA becomes applicable when Federal Trustees propose to take restoration actions, which begins with the development of a Draft Restoration Plan." 15 CFR 990.23(b).

Restoration actions required by reference (b) are *not* subject to NEPA because these actions occur under CERCLA authority which has procedures and public involvement requirements that are "functionally equivalent" to NEPA.

a. **Evaluation and Selection of Restoration Alternatives.** The Trustees must evaluate the restoration alternatives developed. This evaluation must be based upon the criteria listed in references (a) or (b) as appropriate.

b. **Draft Restoration Plan.** The Trustees may use a Regional Restoration Plan or existing restoration project where such a Plan or project is determined to be the best alternative among a range of feasible restoration alternatives considered. In any case, the Draft Restoration Plan must be capable of meeting the Trustees' obligation to restore the injured natural resources and services and endeavor to compensate the public for interim loss of use.

Because Federal agencies have adopted differing NEPA procedures, Trustees must agree upon the NEPA procedures to use when assessing NRD for a particular spill.

Where the Navy is a Trustee, the Navy REC should promote the Navy's NEPA procedures found at chapter 2 of this Instruction. The Navy REC shall consult with CNO (N45) on relevant NEPA requirements before initiating negotiations with co-Trustees.

c. **Public Review and Comment.** Once the Trustees have decided to proceed with

restoration, they must publish a written Notice of Intent to Conduct Restoration or make available to the public an administrative record documenting the basis for the Trustees' decision to proceed with restoration. The Notice must give the public a reasonable opportunity to review and comment upon the record and Draft Restoration Plan.

d. **Final Restoration Plan.** Once Trustees have taken public comment on the Draft Restoration Plan, they must develop a Final Restoration Plan.

27-7.3.3 Damage claims

a. **Oil.** Under reference (a), the Trustees may settle claims for natural resource damages, with or without completing the damage assessment process, provided that the settlement is fair, reasonable and in the best interest of the public. In the judgment of the Trustees, the settlement must satisfy the goals of OPA 90 with particular consideration for the ability of the settlement to restore injured natural resources or services. Funds recovered in the settlement of such claims may be expended only in accordance with the restoration plan. Costs incurred by the Trustees in the assessment, planning and implementation process, however, may be reimbursed from these funds. (See paragraph 27-9.1.1.)

b. **Hazardous Substances.** Under reference (b), the Trustees may settle claims for natural resource damages, with or without completing the damage assessment process, provided that the settlement is fair, reasonable and in the best interest of the public. Funds recovered in the settlement of such claims may be expended only to restore, replace, rehabilitate or acquire the equivalent of the injured natural resources or services in accordance with the Final Restoration Plan. Costs incurred by the Trustees in the assessment, planning and implementation

process, however, may also be reimbursed from these funds.

27-7.3.4 Restoration Implementation. At the conclusion of damage assessment and restoration planning activities, as described by references (a) and (b), the Trustees:

a. Shall open an administrative record to document restoration implementation phase decisions, actions and expenditures, as well as modifications to the Final Restoration Plan;

b. Shall present the RP with a written demand for the damages determined per references (a) and (b) by certified mail or such other means to establish the date of receipt by the RP. The demand must also include:

(1) Identification of the incident from which the claims arise;

(2) Identification of the Trustees asserting the claims and a statement of the statutory basis for Trusteeship;

(3) A brief description of the injuries for which the claim is being sought;

(4) An index to the administrative record;

(5) A Final Restoration Plan or Notice of Intent to Use a Regional Restoration Plan or Existing Restoration Project; and

(6) A request for reimbursement of reasonable assessment costs, the costs of emergency restoration and interest on the amounts so claimed.

c. Shall open an account for recovered damages per references (a) and (b). Joint Trustee recoveries may be deposited in a joint account under the registry of the applicable Federal court

where an enforceable agreement is established to govern management of such an account.

27-7.3.5 Restoration Monitoring. The Trustees shall assess the success of restoration implementation under the monitoring provisions of the Final Restoration Plan.

27-8 DAMAGE ASSESSMENT

27-8.1 Oil Spills. Under reference (a), the natural resource damage assessment process incident to a discharge of oil includes three phases: Pre-assessment; Restoration Planning; and Restoration Implementation. This subsection summarizes those damage assessment procedures as detailed in reference (a). Navy policy (see subsection 27-5.1 of this chapter) calls for the use of reference (a) procedures regardless of the location of the spill, the provisions of OPA 90 (33 U.S.C. 2702) notwithstanding.

27-8.1.1 Pre-assessment Phase. The Pre-assessment Phase is a preliminary fact-finding exercise that provides the information necessary to determine whether: (a) the Trustee has jurisdiction over a particular incident and (b) if restoration planning is necessary.

a. Determining Jurisdiction under OPA 90. Upon notification of a spill or release incident, the Trustees must first determine whether an incident has occurred as defined by reference (a) subpart (c), and whether natural resources within Navy management or control have been or may be, injured as a result of the Incident. If the conditions of subpart c are met, the Trustees may assume jurisdiction and pursue restoration under OPA 90, provided that the release is not:

(1) Permitted under a permit issued by Federal, State or local authority;

(2) From a public vessel; or

(3) From an onshore facility subject to the Trans-Alaska Pipeline Authority Act, 43 U.S.C. 1651.

b. Determining Need to Conduct Restoration Planning. If jurisdiction under OPA 90 is satisfied, Trustees must decide whether to conduct restoration planning. Criteria to determine whether restoration planning may be appropriate include:

(1) Whether injury to natural resources has resulted from or is likely to result from the Incident;

(2) Whether response actions have adequately addressed or are expected to address the injury;

(3) Whether feasible primary and compensatory restoration alternatives exist to address potential injury.

c. Threshold Requirements. If the criteria of either subpart (a) or (b) of this part are not met, the Trustees may not take additional action to pursue restoration under OPA 90. However, the Trustees may take additional action to finalize these determinations and to recover from the RP all reasonable assessment costs.

d. Notice of Intent to Conduct Restoration. If the criteria recited at subparts (a) and (b) above have been met and the Trustees decide to proceed with damage assessment, they must prepare a Notice of Intent to Conduct Restoration Planning. Trustees must make this Notice available to the public and deliver it to the RP. (See 15 CFR 990.44.)

e. Public Record. If Restoration Planning is to proceed, the Trustees are required to make available to the public an administrative record documenting the basis for all decisions pertaining to the Restoration Plan. (See 15 CFR 990.45.)

27-8.1.2 Restoration Planning. If Restoration Planning is justified, the Trustees must conduct injury determination, injury quantification and restoration selection.

a. Injury Determination. The Trustees must determine whether:

(1) the definition of injury has been met; and

(2) the injured resource has been exposed to the oil, a pathway can be established from the discharge to the injured resource and the injury resulted from the discharge; or

(3) an injury to a resource or an impairment of a natural resource service has occurred as a result of response actions or a substantial threat of discharge of oil.

When selecting the potential injuries to assess, the Trustees should consider the following factors:

(1) the natural resources and services of concern;

(2) the procedures available to evaluate and quantify injury including time and cost requirements;

(3) the evidence indicating exposure;

(4) the pathway from the incident to the natural resource and/or service of concern;

(5) the adverse change or impairment constituting injury;

(6) the evidence indicating injury;

(7) the mechanism by which injury occurred;

(8) the potential degree, spatial and temporal extent of the injury;

(9) the potential natural recovery period; and

(10) the kinds of primary and/or compensatory restoration actions that are feasible.

b. Injury Quantification. Upon determining that injury has occurred, the Trustees must quantify the extent of injury relative to baseline. To quantify injury, the Trustees must estimate, quantitatively or qualitatively, the time for natural recovery without restoration, considering the following factors:

(1) The nature, degree and spatial and temporal extent of injury;

(2) The sensitivity and vulnerability of the injured resource or service;

(3) The reproductive and recruitment potential;

(4) The resistance and resilience of the affected environment;

(5) The natural variability; and

(6) The physical/chemical processes of the affected environment.

c. Primary Restoration. Primary restoration is action, including natural recovery, that returns injured natural resources and services to baseline.

(1) *Natural Recovery* – The Trustees must consider a natural recovery option in which no human intervention would be taken directly to restore injured natural resources and services to baseline.

(2) *Active Primary Restoration* – The Trustees should also consider whether accelerated recovery due to direct human intervention may be

preferable to natural recovery to restore natural resources and services to baseline.

d. **Compensatory Restoration.** For each alternative, the Trustees must consider compensatory restoration actions to compensate for the interim loss of natural resources and services pending recovery. When evaluating compensatory restoration actions, the Trustees must consider if the actions provide services of a comparable type, quality and value to those injured and scale the actions accordingly.

e. **Draft Restoration Plan.** The Draft Restoration Plan is generally subject to the requirements of NEPA and reference (h). Trustees should make the plan available for public review and comment. Where appropriate, the Trustees may propose a Regional Restoration Plan or existing restoration project as a feasible restoration alternative. These plans or projects must satisfy the Trustees' obligation to "restore, rehabilitate, replace or acquire the equivalent of the injured natural resources and services and compensate for interim losses". At a minimum, the Draft Restoration Plan must include:

(1) a summary of injury assessment procedures used;

(2) a description of the nature, degree, spatial extent and temporal extent of injuries resulting from the incident;

(3) the goals and objectives of restoration;

(4) the range of restoration alternatives considered and a discussion of how they were developed and evaluated under 15 CFR 990;

(5) the Trustees' tentative preferred alternatives;

(6) a description of the past and proposed involvement of the responsible parties in the assessment; and

(7) a description of the monitoring procedures required to document the effectiveness of the restoration action taken, including performance criteria used to determine the success of restoration or the need for interim corrective action.

f. **Final Restoration Plan.** Following an opportunity for public review and comment, the Trustees develop a Final Restoration Plan to include the elements recited at subparagraph 27-8.1.3, responses to public comment, indicating where changes were made to the Draft Restoration Plan, if any. The Trustees must then present a written demand to the RP under 15 CFR 990.62.

27-8.1.3 Restoration Implementation. The Trustees should give the RP a reasonable opportunity—90 days under National Pollution Fund Center (NPFC) rules—to either implement the Final Restoration Plan or to fund the Trustees' implementation of the Plan. While RP implementation and management of the restoration project is probably in the best interest of the public, the guiding principle should be the settlement of damage claims without litigation. Should the RP decline to settle the claim, the Trustees should refer the claim to the Environment Division of the Department of Justice for collection and civil action in Federal Court if required.

27-8.1.4 Restoration Monitoring. In accordance with the monitoring component of the final restoration plan, see subparagraph 27-8.1.2(e)(7), the Trustees should gauge the success of restoration implementation by monitoring both reference and control sites reasonably calculated to assess the progress and performance of the action taken.

27-8.2 Hazardous Substances. Under reference (b), the natural resource damage assessment process for hazardous substances has

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four phases: Pre-assessment, Assessment Planning, Assessment and Post-assessment.

27-8.2.1 Pre-assessment. The first phase of a natural resource damage assessment conducted under reference (b) involves a Pre-assessment screen to determine if further assessment actions are warranted and to determine the procedures most appropriate to Assessment Planning in the instant circumstances. The Pre-assessment screen includes the following criteria:

- a. whether a HS release has occurred;
- b. whether natural resources have been or are likely to be adversely affected by the release;
- c. whether the quantity or concentration of HS sufficient to cause injury;
- d. whether assessment data is readily obtainable or likely to be obtained at reasonable cost; and
- e. whether response actions will sufficiently remedy the injury to natural resources without further action.

27-8.2.2 Assessment Planning. The goal of this phase is to draft an Assessment Plan that adequately describes the methods that the Trustees intend to use to conduct natural resource damage assessment in the most cost-effective manner. Trustees must make the Assessment Plan available for public review and comment. The Assessment Plan must include a description of the natural resources and geographic area involved; a statement of the authority for asserting Trusteeship; and a description of the procedures that the Trustees intend to use to conduct injury determination, quantification and damage determination. During the planning phase, the Trustees must choose between Types A and B assessment methodology. The methodology so chosen will facilitate the execution of the Assessment Plan.

27-8.2.3 Assessment. During this phase, the Trustees execute the protocol described in the Assessment Plan determining injury and quantifying damages under Type A or B assessment procedures.

a. **Type A Procedures.** In a Type A Assessment, the Trustees perform Injury Determination, Quantification and Damage Determination using standardized procedures involving minimal fieldwork. Typically, Type A procedures involve the use of a computer model to assess damages from small HS releases in coastal and marine environments.

b. **Type B Procedures.** In a Type B Assessment, the Trustees perform the same determinations using a range of alternative scientific and economic methodologies. Type B procedures are more labor intensive in the collection and analysis of available data and, consequently, significantly more expensive and time consuming.

27-8.2.4 Post-assessment. Whether the Trustees elect Type A or Type B assessment procedures, reference (b) requires the Post-assessment preparation of a Report of Assessment, the establishment of an escrow account to receive damage payments and the development of a Restoration Plan.

27-9 FUNDING

27-9.1 Oil Spill Liability Trust Fund (OSLTF). OPA 90 (33 U.S.C. 2712) states funds shall be made available from the OSLTF for the payment of costs incurred by the Trustees in assessing natural resource damages and in developing and implementing plans for the restoration, rehabilitation, replacement or acquisition of equivalent natural resources. The NPFC administers the OSLTF.

27-9.1.1 Assessment Costs. Federal Trustees have access to the OSLTF to fund the cost of:

- a. notifying and coordinating with other Trustees and the Federal OSC;
- b. pre-assessment determination;
- c. damage assessment determination;
- d. data collection and analysis; and
- e. report preparation

27-9.1.2 Damage Claims. Under a 1997 inter-agency ruling, the NPFC may pay uncompensated NRD claims from the OSLTF Funds without seeking further appropriation.

27-9.1.3 Requests for Funds. The Trustees should first seek funding from the RP for both the costs of assessment and natural resource damage claims. If the RP is unknown, unable or unwilling to cooperate with the reasonable requests of the Trustees, the Trustees may petition the NPFC for funding from the OSLTF.

a. **Inter-Agency Agreement.** To access the Fund, the LAT must conclude an interagency agreement with the NPFC for each OPA 90 Incident requiring OSLTF Funds. The LAT must submit the request on behalf of all of the affected Trustees to the cognizant NPFC Regional Manager. The request for OSLTF Funds must provide the information specified in chapter 2 of reference (i), Procedures for Accessing the OSLTF to Initiate Natural Resource Damage Assessments.

b. **Reimbursement and Cost Recovery.** According to the interagency agreement, the NPFC will review the Trustees' request and advise them whether funding will be available for assessment costs and/or damage claims. To trigger access to OSLTF Funds, the Trustees must submit to the NPFC an USCG SF-180 or equivalent together with cost documentation.

27-9.1.4 Record keeping.

a. **Cost Documentation.** The LAT and each participating Trustee are required to establish a system to record and to document costs, including the cost of personnel, equipment and services.

b. **Content of Documentation.** The NPFC does not specify a format that cost documentation must take; however, Navy RECs are advised to follow the format identified in chapter 6 of reference (i).

c. **Trustee Reports.** Where the OSLTF advances funds, Trustees are required to submit a final report of costs to the NPFC. Trustees must submit documentation to the NPFC within 60 days of completing the funded activity. The LAT should review the cost documentation submitted by each of the Trustees and certify that the expenses were both reasonable and necessary. A narrative summary in layman's language describing the activity and the rationale for it must accompany the cost documentation.

27-9.2 CERCLA Superfund. Section 111 of CERCLA establishes a Hazardous Substance Response Trust Fund (the "Superfund"). Section 112 directs the President to establish forms and procedures for the filing of claims against the Superfund. Congressional appropriations language, however, expressly prohibits the payment of natural resource damage claims or assessment costs from the Superfund.

27-9.3 RP Funding

27-9.3.1 MOU Accounts. Where a Memorandum of Understanding between the Trustees and RP so provides, the RP may establish an account from which funds may be drawn to cover the cost of pre-assessment and/or damage assessment activities. The availability of such accounts notwithstanding, Trustees may ultimately be required to invoke the statutory funding mechanisms described at subsection 27-9. Accordingly, Trustees may be well advised to

establish a cost accounting system similar to that described in paragraph 27-9.1.4.

27-9.3.2 Revolving Escrow Accounts. DOI and NOAA have secured, via special legislation, Congressional authorization to establish a revolving escrow account for the receipt of funds from non-Federal sources in the settlement of natural resource damage claims. DOI also has

used its account to receive funds in settlement of claims interposed by Federal Trustees other than DOI where DOI served as co-Trustee in the same action. Whether the DOI or NOAA account would be available to receive funds in settlement of claims interposed by Navy RECs acting on behalf of SECDEF as Federal Trustee for Natural Resources has yet to be determined by inter-agency agreement.

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TABLE 27-1 NATURAL RESOURCE DAMAGE ASSESSMENT (NRDA) PLANNING CONSIDERATIONS
Designate point of contact for NRDA issues.
Publish the point of contact in Area and Regional Contingency Plans (ACPs/RCPs).
Provide technical/scientific assistance/information on NRDA in the preparation of ACPs/RCPs.
Identify special concerns related to natural resources under your management.
Identify sources for baseline condition information (Natural Resource Management Plans, Environmental Impact Statements, Area and Regional Contingency Plans, etc.).
Identify local agency NRDA contacts in your Facility Response Plan.
Identify funding protocol for contracting private sector NRDA expertise.

TABLE 27-2 NATURAL RESOURCE DAMAGE ASSESSMENT PROCESS FLOWCHART	
ACTION	PARTIES RESPONSIBLE
Notification of spill or release Incident	Party discovering spill/release
Survey injury to natural resources within 6 hours of notification: Preliminary Impact & Exposure Report (PIER). Deliver PIER to Regional Environmental Coordinator (REC) NLT COB next business day.	Facility Response Team
Review PIER. Determine whether further assessment will be required. Notify other Trustees (<i>Federal, State, Indian, Foreign Government</i>).	REC
Determine whether injury has occurred to resources. Notify Responsible Party of intent to conduct NRDA.	Trustees
Assess extent of injury by comparing to baseline condition. Determine monetary damages using: Type A Assessment (for OHS), Type B Assessment (for HS) or Any other mutually agreeable assessment method	Trustees
Seek monetary damages from Responsible Party. Seek participation from Oil Spill Liability Trust Fund.	Lead Administrative Trustee
Develop restoration plan. Seek public comment on proposed plan.	Trustees
Implement restoration plan. Monitor implementation as required by NEPA.	Trustees